

Update: Domestic Violence Benchbook (2d ed)

CHAPTER 5

Evidence in Criminal Domestic Violence Cases

5.11 Rape Shield Provisions

C. Procedures Under MCL 750.520j

2. Effect of Defendant's Violation of Notice Requirements

Insert the following text on page 188 at the end of the last paragraph in subsection 2:

In *People v McLaughlin*, ___ Mich App ___ (2003), the victim testified that, prior to the sexual assault, she had suffered a severe spinal injury, and that she was in too much pain to have consensual sexual relations with anyone. The defendant sought to admit evidence of consensual sexual relations between him and the victim that occurred both before and after the victim's spinal injury. The defendant did not provide any notice prior to the trial, as required by MCL 750.520j. The trial court excluded the evidence. On appeal, the Court of Appeals reiterated its holdings in *People v Lucas (On Remand)*, 193 Mich App 298 (1992) and *People v Lucas (After Remand)*, 201 Mich App 717 (1993), and found that it was error for a trial court to exclude evidence *solely* on the basis of defendant's failure to give notice.

The Court of Appeals concluded that the defendant's proposed evidence of consensual sexual relations prior to the victim's injury would not have served a legitimate purpose because the evidence had already established that the defendant and victim had such relations. Evidence that the defendant and victim had engaged in anal intercourse prior to the victim's injury only had a "tenuous connection" to the issue of consent but a "great potential for embarrassment, harassment, and unnecessary intrusion into privacy." *McLaughlin, supra* at ___, citing *Lucas (On Remand), supra* at 302-03. The Court of Appeals also concluded that evidence of consensual sexual relations between the defendant and victim after the victim's injury would have undermined the victim's credibility and bolstered the defendant's defense. However, the Court of Appeals found exclusion of this evidence harmless

error because the defendant was able to introduce testimony describing such relations and other activities the victim engaged in despite her back injury. Furthermore, defendant's delay in introducing the evidence suggested "wilful misconduct designed to create a tactical advantage." *McLaughlin, supra* at ___, citing *Lucas (On Remand), supra* at 302-03.